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In re Application of
Jean-Pierre LUGUERN, et al.
Application No. 08/941,236
Filed: September 30, 1997
For: **CINGESTION CONTROL AND TRAFFIC
MANAGEMENT SYSTEM FOR PACKET-
BASED NETWORKS**

DECISION ON PETITION TO
WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed August 14, 2000 for Withdrawal of Office Action of February 14, 2000 and Issuance of New Office Action, and Concurrent Request for Refund. The petition is treated as request to withdraw holding of abandonment under 37 CFR § 1.181 (a).

The application is in an abandoned status for failing to file an Appeal Brief in response to the Notice of Appeal filed August 14, 2000. A Notice of Abandonment has not been mailed.

Petitioner submits that the final Office action mailed February 14, 2000 should be withdrawn.

An amendment was filed December 2, 1999 in response to a non-final Office action mailed September 2, 1999. A review of the record indicates that page 2 was missing from the amendment. Page two contained significant amendment to both pending claims 1 and 2. (A complete copy of the amendment, including page two was filed with the petition.) Apparently, the examiner did not realize the page was missing and consequently issued a final Office action on February 14, 2000. The amendment originally filed is defective and non-responsive.

In accordance with MPEP 714.03 "...(w)here the amendment is bona fide but contains a serious omission, the examiner should..., if there is insufficient time remaining, issue an Office action setting a 1-month time period to complete the reply pursuant to 37 CFR 1.135(c). ...the examiner should not further examine the application on its merits unless and until the omission is timely supplied." The amendment of December 2, 1999 contains a serious omission.

Accordingly, the holding of abandonment is withdrawn. The file will be forwarded to the examiner for preparing an Office action (Notice of Non-Responsive Amendment) setting a one-month period to complete the amendment originally filed December 2, 1999.

The final Office action mailed February 14, 2000 is vacated. The extension of time fee and the Notice of Appeal will be refunded. Any inconvenience caused petitioner due to the delay in answering the petition is regretted.

For the reasons set forth above, the petition is **GRANTED**.

The application file will be forwarded to the examiner for preparing the Notice as outlined above.

Kenneth A. Wieder

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